

Reszetylo v. Morgan Stanley, No. 02-56680

DEC 17 2003

FERNANDEZ, Circuit Judge, concurring and dissenting:

CATHY A. CATTERSON
U.S. COURT OF APPEALS

I concur in the determination that the district court properly granted summary judgment against Reszetylo on her hostile environment, acts of sex discrimination, and ADA claims. However, I dissent from the determination that, simply due to propinquity, she has presented a triable case for retaliation on account of her sexual discrimination complaints. Propinquity alone should not suffice here. See Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 273–74, 121 S. Ct. 1508, 1511, 149 L. Ed. 2d 509 (2001). At any rate, as I see it, she has not presented evidence that Morgan Stanley’s nondiscriminatory reason for telling her to come into the office (a desire by her manager to supervise her more closely) and for terminating her (her virtual refusal to come into the office on a regular basis) was pretextual. See Brown v. City of Tucson, 336 F.3d 1181, 1188 (9th Cir. 2003); Brooks v. City of San Mateo, 229 F.3d 917, 928 (9th Cir. 2000).